

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

COAST TO COAST TITLE, LLC, et al.,

Plaintiffs

v.

TYRRELL L. GARTH, et al.,

Defendants.

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Civil Action No. 4:24-cv-02767

**DEFENDANTS TYRRELL L. GARTH AND PHILLIP H. CLAYTON’S
UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED EXHIBITS B–E
TO DEFENDANTS’ MOTION TO DISMISS**

Defendants Tyrrell L. Garth and Phillip H. Clayton (“Defendants”) file this Unopposed Motion for Leave to File Amended Exhibits B–E to Defendants’ Motion to Dismiss and would show the Court as follows:

INTRODUCTION

Defendants filed their Motion to Dismiss Plaintiffs’ First Amended Complaint Pursuant to Rules 12(b)(6) and 9(b) on December 2, 2024. Dkt. No. 37. Defendants filed 12 exhibits to the Motion, as well as a proposed order granting the Motion. On the evening of January 31, 2025, Defendants learned that they inadvertently filed the incorrect documents for Exhibits B–E when Plaintiffs filed Objections to those exhibits. Dkt. No. 53.

Defendants move herein for leave from the Court to file Amended Exhibits B-E to be considered in lieu of the Exhibits B–E originally filed on December 2, 2024. Because Plaintiffs were on notice at all relevant times of the documents that Defendants intended to attach as Exhibits

B–E, and in possession of the documents themselves, Plaintiffs will not be harmed or prejudiced by the Court granting leave to amend these exhibits.

ARGUMENT

Courts have found that inadvertent and “inconsequential defect[s]” to a filing are not harmful. *Lim v. Metcalf & Associates, P.C.*, No. 22-CV-323-WMC, 2022 WL 17261402, at *2 (W.D. Wis. Nov. 29, 2022) (denying motion to strike an amended exhibit to a notice of removal that “mistakenly attached a nearly identical complaint plaintiff filed against them in the Circuit Court of Cook County, Illinois, rather than the Wisconsin state court complaint filed in Rock County Circuit Court”); *see also Quality Built Homes, Inc. v. Vill. of Pinehurst*, No. 1:06CV1028, 2008 WL 11355357, at *1 (M.D.N.C. Nov. 20, 2008) (granting a motion for leave to file an amended exhibit to Affidavit of Attorney’s Fees).

This inconsequential defect of Defendants having inadvertently filed several incorrect exhibits is not harmful and does not prejudice Plaintiffs. When Plaintiffs responded to Defendants’ Motion for Summary Judgment on December 23, 2024 [Dkt. No. 41], they did not raise the issue of Exhibits B–E not actually being the Promissory Notes they were intended to be. *See* Dkt. No. 41. As a result, they were not harmed or prejudiced in their ability to respond to the Motion because they either were unaware of the issue at the time or simply referred to the Promissory Notes they have had in their possession for months before this lawsuit was even filed.¹

Moreover, the Motion to Dismiss made it clear exactly which documents Exhibits B–E were intended to be by referring to them as such explicitly in the Motion, containing a screen

¹ As is detailed in Defendants’ contemporaneously filed Response in Opposition to Plaintiffs’ Objections to Defendants Tyrrell L. Garth and Phillip H. Clayton’s Exhibits Attached to Their Motion to Dismiss, Plaintiffs have been sued in another lawsuit where the Petition contained the exact Promissory Notes that should have been attached as Exhibits B–E. They have answered in that lawsuit and are even represented by the very same counsel.

capture of the pertinent contractual language from the Promissory Notes, and the exhibit names themselves in the electronic filing. *See* Dkt. No. 37 at 13.

CONCLUSION

Defendants Tyrrell L. Garth and Phillip H. Clayton respectfully request the Court grant them leave to file the Amended Exhibits B–E, which are attached hereto with exhibit slip sheets titled accordingly.

Dated: February 3, 2025

Respectfully submitted,

BECK REDDEN LLP

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**ATTORNEYS FOR DEFENDANTS
TYRRELL L. GARTH AND PHILLIP H.
CLAYTON**

CERTIFICATE OF CONFERENCE

I hereby certify that on February 3, 2025, Counsel of Record for Plaintiffs confirmed that they are unopposed to the relief sought herein.

By /s/ Kaitie Sorenson
Kaitie Sorenson

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2025, I served the foregoing notice via the CM/ECF system, which will provide notice to all parties of record.

By /s/ Kaitie Sorenson
Kaitie Sorenson